

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KELLY BOLDING and MICHAEL
MANFREDI, individually and on behalf of a
class of all others similarly situated,

Plaintiffs,

v.

BANNER BANK, a Washington Corporation,

Defendant.

No. C17-0601RSL

STIPULATED PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties stipulate to and enter into the following agreement regarding discovery, which the parties respectfully ask the court to enter as a Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the

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2 protection it affords from public disclosure and use extends only to the limited
3 information or items that are entitled to confidential treatment under applicable legal
4 principles, and it does not presumptively entitle parties to file confidential information
5 under seal.

6 2. “CONFIDENTIAL” MATERIAL

7 “Confidential” material shall include the following documents, data, and tangible
8 things produced or otherwise exchanged:

- 9 a) compensation and overtime plans, along with documents discussing those
10 plans to the extent they contain private information relating to individual
11 employees, or other information Banner believes is proprietary;
12 b) policies and procedures regarding commissions, overtime, or other
13 compensation earned by or paid to employees to the extent they contain
14 private information relating to individual employees or information Banner
15 believes is proprietary;
16 c) personally identifying information of the producing party or the producing
17 party’s employees or customers, including but not limited to proprietary
18 customer information;
19 d) private data regarding commissions, overtime, or other compensation earned
20 by or paid to individual employees, or other information that is proprietary;
21 e) data reflecting sales of loan services, including but not limited to information
22 about the volume and types of sales, sales leads, sales incentives, or sales
23 goals;
24 f) non-public customer account information, including but not limited to
25 customers’ names, dates of birth, drivers’ license numbers, social security
26 numbers, addresses, telephone numbers, account numbers, routing numbers,

- 1 mortgage or other loan numbers, mortgage loan applications, background
2 checks, credit scores and reports, financial or asset statements or information,
3 tax returns or tax-related forms like W-2s, account balances, and the like;
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5 g) proprietary information about the producing party's computer information
6 systems (including but not limited to systems and applications used in
7 managing commission, overtime, and other compensation functions), general
8 hardware and software specifications, and related instructions and training
9 information;
10 h) proprietary employee training and evaluation materials;
11 i) employee personnel files;
12 j) the financial books and records of the producing party and information
13 pertaining to those financial books and records;
14 k) information that the producing party has regarding its customers and its
15 competitors;
16 l) the producing party's contracts with suppliers, vendors, customers,
17 contractors, subcontractors;
18 m) any information that the producing party is obligated by contract or state or
19 federal law to keep confidential; and
20 n) any other information the producing party's business competitors could use to
21 obtain a business or legal advantage over the producing party.

22 3. SCOPE

23 The protections conferred by this agreement cover not only confidential
24 material (as defined above) but also (1) any information copied or extracted from
25 confidential material; (2) all copies, excerpts, summaries, or compilations of
26 confidential material; and (3) any briefs, memoranda, testimony, conversations, or
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1 presentations by parties or their counsel that might reveal confidential material. As an
2 exception, the protections conferred by this agreement do not cover information that is in
3 the public domain or becomes part of the public domain through trial or otherwise.
4 However, the foregoing exception does not apply to information that is or becomes part
5 of the public domain because of an illegal, wrongful, unlawful, negligent, or otherwise
6 unauthorized act or omission of a person other than the designating party.
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8 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

9 4.1 Basic Principles. A receiving party may use confidential material that is
10 disclosed or produced by another party or by a non-party in connection with this case
11 only for prosecuting, defending, or attempting to settle this litigation. Confidential
12 material may be disclosed only to the categories of persons and under the conditions
13 described in this agreement. Plaintiff's counsel agrees to redact Confidential Material as
14 defined in section 2(f) from any document produced by Defendant prior to submitting the
15 document as an exhibit during any deposition or filing the document with the Court.
16 Plaintiff's counsel further agrees that, to the extent they disclose Confidential Material to
17 persons listed in section 4.2, including to FLSA opt-in Plaintiffs, putative Rule 23 class
18 members, non-party witnesses, and experts or consultants, they will require those persons
19 to sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A) before viewing
20 documents. Confidential material must be stored and maintained by a receiving party at a
21 location and in a secure manner that ensures that access is limited to the persons
22 authorized under this agreement.

23 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the Court or permitted in writing by the designating party, a
25 receiving party may disclose confidential material only to:

- 26 (a) the receiving party's and designating party's counsel of record in
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2 this action (including in-house counsel and legal department staff of any party), as well as
3 employees of counsel to whom it is reasonably necessary to disclose the information for
4 this litigation;

5 (b) a party, the officers, directors, and employees of the receiving
6 party to whom disclosure is reasonably necessary for this litigation, unless the parties
7 agree that a particular document or material produced is for Attorney's Eyes Only and is
8 so designated;

9 (c) experts and consultants to whom disclosure is reasonably
10 necessary for this litigation and who have signed the "Acknowledgment and Agreement
11 to Be Bound" (Exhibit A);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the
14 duplication of confidential material, provided that counsel for the party retaining the copy
15 or imaging service instructs the service not to disclose any confidential material to third
16 parties and to immediately return all originals and copies of any confidential material;

17 (f) Non-party witnesses in the action to whom disclosure is reasonably
18 necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
19 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

20 Pages of transcribed deposition testimony or exhibits to depositions that reveal
21 confidential material must be separately bound by the court reporter and may not be
22 disclosed to anyone except as permitted under this agreement;

23 (g) the author or recipient of a document containing the information or
24 a custodian or other person who otherwise possessed or knew the information.

25 (h) the videographer who videotapes Confidential Information at a
26 deposition in this litigation;

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2 (i) any mediator or discovery referee in this litigation, and employees
3 and personnel of said mediator or discovery referee;

4 (j) any other individual agreed to in writing by the designating party.

5 4.3 Filing Confidential Material. Before filing confidential material or
6 discussing or referencing such material in court filings, the filing party shall confer with
7 the designating party to determine whether the designating party will remove the
8 confidential designation, whether the document can be redacted, or whether a motion to
9 seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the
10 procedures that must be followed and the standards that will be applied when a party
11 seeks permission from the court to file material under seal.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each party or non-party that designates information or items for protection under this
15 agreement must take care to limit any such designation to specific material that qualifies
16 under the appropriate standards. The designating party must designate for protection
17 only those parts of material, documents, items, or oral or written communications that
18 qualify, so that other portions of the material, documents, items, or communications for
19 which protection is not warranted are not swept unjustifiably within the ambit of this
20 agreement.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that
22 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*,
23 to unnecessarily encumber or delay the case development process or to impose
24 unnecessary expenses and burdens on other parties) expose the designating party to
25 sanctions.

26 If it comes to a designating party's attention that information or items that it
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1 designated for protection do not qualify for protection, the designating party must
2 promptly notify all other parties that it is withdrawing the mistaken designation.
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4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated
6 or ordered, disclosure or discovery material that qualifies for protection under this
7 agreement must be clearly so designated before or when the material is disclosed or
8 produced.

9 (a) Information in documentary form: (*e.g.*, paper or electronic
10 documents and deposition exhibits, but excluding transcripts of depositions or other
11 pretrial or trial proceedings), the designating party must affix the word
12 “CONFIDENTIAL” to each page that contains confidential material. If only a portion or
13 portions of the material on a page qualifies for protection, the designating party also must
14 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
15 margins); provided, however, that a party may designate documents produced in this
16 matter as “CONFIDENTIAL” on a family level (*e.g.*, an email and its attachment(s)) in
17 order to reduce cost and burden during the review and production process.

18 (b) Testimony given in deposition or in other pretrial proceeding: the
19 parties and any participating non-parties must identify on the record, during the
20 deposition or other pretrial proceeding, all protected testimony, without prejudice to their
21 right to so designate other testimony after reviewing the transcript. Any party or non-
22 party may, within fifteen days after receiving the transcript of the deposition or other
23 pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
24 confidential. If a party or non-party desires to protect confidential information at trial,
25 the issue should be addressed during the pre-trial conference.

26 (c) Other tangible items: the producing party must affix in a
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2 prominent place on the exterior of the container or containers in which the information or
3 item is stored the word "CONFIDENTIAL." If only a portion or portions of the
4 information or item warrant protection, the producing party, to the extent practicable,
5 shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive the
8 designating party's right to secure protection under this agreement for such material.
9 Upon timely correction of a designation, the receiving party must make reasonable efforts
10 to ensure that the material is treated in accordance with the provisions of this agreement.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any party or non-party may challenge a
13 designation of confidentiality at any time. Unless a prompt challenge to a designating
14 party's confidentiality designation is necessary to avoid foreseeable, substantial
15 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
16 litigation, a party does not waive its right to challenge a confidentiality designation by
17 electing not to mount a challenge promptly after the original designation is disclosed.

18 6.2 Meet and Confer. The parties must make every attempt to resolve any
19 dispute regarding confidential designations without court involvement. Any motion
20 regarding confidential designations or for a protective order must include a certification,
21 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
22 meet and confer conference with other affected parties in an effort to resolve the dispute
23 without court action. The certification must list the date, manner, and participants to the
24 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
25 conference.

26 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
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1 court intervention, the designating party may file and serve a motion to retain
2 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if
3 applicable). The burden of persuasion in any such motion shall be on the designating
4 party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or
5 impose unnecessary expenses and burdens on other parties) may expose the challenging
6 party to sanctions. All parties shall continue to maintain the material in question as
7 confidential until the court rules on the challenge.
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9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation that
12 compels disclosure of any information or items designated in this action as
13 “CONFIDENTIAL,” that party must:

14 (a) promptly notify the designating party in writing and include a copy
15 of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or
17 order to issue in the other litigation that some or all of the material covered by the
18 subpoena or order is subject to this agreement. Such notification shall include a copy of
19 this agreement; and

20 (c) cooperate with respect to all reasonable procedures sought to be
21 pursued by the designating party whose confidential material may be affected.

22 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
24 confidential material to any person or in any circumstance not authorized under this
25 agreement, the receiving party must immediately (a) notify in writing the designating
26 party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized
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2 copies of the protected material; (c) inform the person or persons to whom unauthorized
3 disclosures were made of all the terms of this agreement; and (d) request that such person
4 or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached
5 hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of
10 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B)
11 and Section 12 of the Combined Joint Status Report and Discovery Plan [Dkt. 14]. This
12 provision is not intended to modify whatever procedure may be established in an e-
13 discovery order or agreement that provides for production without prior privilege review.
14 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set
15 forth herein.

16 10. NON TERMINATION AND RETURN OF DOCUMENTS

17 Within 60 days after the termination of this action, including all appeals, each
18 receiving party must certify destruction of all confidential material to the producing
19 party, including all copies, extracts and summaries thereof.

20 Notwithstanding this provision, counsel are entitled to retain one archival copy of
21 the case file, including all documents filed with the Court, trial, deposition, and hearing
22 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work
23 product, and consultant and expert work product, even if such materials contain
24 confidential material; and counsel may certify that confidential material attached to email
25 and stored in counsel’s email systems will continue to be maintained securely and
26 consistent with the provisions of this Order.

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2 The confidentiality obligations imposed by this agreement shall remain in effect
3 until a designating party agrees otherwise in writing or a court orders otherwise.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 DATED-this 11th day of July, 2018

DATED this 11th day of July, 2018

6 THE BLANKENSHIP LAW FIRM, P.S.
7 Attorneys for Plaintiffs

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Attorneys for Defendant Banner Bank

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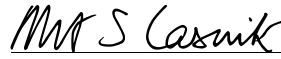
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2 **ORDER**

3 PURSUANT TO STIPULATION, IT IS SO ORDERED.

4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
5 production of any documents in this proceeding shall not, for the purposes of this
6 proceeding or any other proceeding in any other court, constitute a waiver by the
7 producing party of any privilege applicable to those documents, including the attorney-
8 client privilege, attorney work-product protection, or any other privilege or protection
9 recognized by law.

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11 DATED: July 27, 2018

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14 JUDGE ROBERT S. LASNIK
15 United States District Court Judge
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2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its entirety
6 and understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Western District of Washington on _____ in the case of
8 Kelly Bolding and Michael Manfredi v. Banner Bank, C17-0601RSL. I agree to comply
9 with and to be bound by all the terms of this Stipulated Protective Order and I understand
10 and acknowledge that failure to so comply could expose me to sanctions and punishment
11 in the nature of contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person or
13 entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Western District of Washington for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

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19 Date: _____

20 City and State where Sworn and Signed: _____

21 Printed name: _____

22 Signature: _____